

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of the Denial of Cancellation
of Collection Costs of Terry L. Carr,
Respondent

**FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND RECOMMENDATION**

This matter was heard on December 17, 2013, before Administrative Law Judge Thomas W. Wexler, at the Office of Administrative Hearings, St. Paul, Minnesota. The record closed the same day.

Joan Tujetsch, Attorney, Appeals and Legal Services Division, appeared on behalf of the Department of Revenue (DOR). Terry L. Carr (Respondent) appeared on his own behalf.

STATEMENT OF THE ISSUE

Whether Respondent has established one of the conditions provided in Minn. Stat. § 16D.11, subd. 3, which would require the DOR to cancel the collection costs and subtract them from the amount due.

SUMMARY OF CONCLUSION

Respondent has not shown that he meets any of the statutory conditions.

Upon the evidence presented and the arguments of the parties, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. In June 2011, Respondent was convicted of a criminal offense in Hennepin County, Minnesota. He was ordered to pay restitution in the sum of \$314,596.75, for converting his mother's funds.¹

2. On February 11, 2013, Hennepin County referred the debt to the DOR for collection.²

¹ Exhibit 1 and testimony of Terry Carr.

² Ex. 1.

3. The DOR Notice and Order for Hearing states that the statutory collection costs were in the sum of \$62,949.35. The DOR claims this amount represents 20percent of the debt.³ However, 20percent of \$314,596.75 is \$62,919.35. The total amount claimed by the DOR is \$377,516.10, which is based upon the proper collection cost calculation of \$62,919.35.

4. Respondent requested that the collection costs be cancelled and subtracted for two reasons. First, he contends that his income is less than twice the Federal Poverty Guidelines. Second, he argues that there is reasonable cause for his failure to pay, based upon his medical condition.⁴

5. Respondent is 69 years old and unemployed. His sole source of income is Social Security retirement. In 2012, his gross Social Security income, before deducting for Part B premiums, was \$23,266.90, which equates to \$1,938.90 per month. In 2013, his gross social security income was raised to \$1,971.90 per month.⁵

6. For the purpose of determining whether household income is more or less than twice the Federal Poverty Guidelines, the DOR uses a lookback period of 12 months prior to the referral.⁶ Respondent's income during that 12 month period was \$23,299.80.⁷

7. The DOR has offered evidence that the Federal Poverty "thresholds" for 2012 show a weighted average threshold of \$11,011 for persons 65 and over. However, the Federal Poverty "Thresholds" are different than the Federal Poverty "Guidelines."⁸ Minnesota Statutes section 16D.11, subdivision 3(1), refers to the federal poverty "guideline." The 2013 federal poverty guideline for a one person household is \$11,490. Twice that guideline would be \$22,980.00.

8. Respondent's household income for the 12 months preceding the referral date exceeds twice the 2013 federal poverty guideline by \$319.80.

9. Respondent does not have sufficient assets or income to pay the debt.⁹

10. Respondent has reasonable and necessary monthly expenses that substantially exhaust his monthly pre-tax income as follows:

A. Rent	\$984.95
B. Phone (mobile)	\$72.54

³ Notice and Order for Hearing.

⁴ Test. of T. Carr and Exs. 2 and 7.

⁵ Ex. 2.

⁶ Minn. Stat. §16C.11, subd. 3(1).

⁷ Ex. 3.

⁸ See attached appendix A.

⁹ Test. of T. Carr.

C. Auto insurance	\$20.43
D. Phone	\$33.84
E. Electric	\$42.39
F. Credit card debt	\$15.00
G. Discover debt	\$116.00
H. Cable	\$74.81
I. Food	\$200.00
J. Gasoline	\$130.00
K. Clothing	\$25.00
L. Other medical	\$15.00
M. Medicare	\$104.90

TOTAL	\$1,834.86 ¹⁰
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These expense figures submitted by Respondent include no amounts for household items, automobile maintenance (he drives a 2002 Mercury), entertainment, laundry, dry cleaning, gifts, charities, postage, auto license fees, dental, and other common expenses.

11. Respondent has debts in addition to the restitution claimed herein. These other debts are:

A. Discover card	\$2,175.45.
B. MRS Assn.	\$1,739.23.
C. U.S. Dept. of Education	\$58,429.03 (in forbearance until 1/7/14).

12. Respondent has approximately \$1,300 in a checking account and no savings account. He does not own any real estate.¹¹

13. Respondent was diagnosed with a lung tumor which required removal of half of his left lung in 2012. That medical expense was substantially all covered by insurance, except for a medication co-pay.¹²

14. Respondent and the DOR have entered into an installment payment agreement, for payment of 59 monthly payments of \$75.00 beginning July 24, 2013.¹³

¹⁰ Respondent submitted an exhibit packet of financial information which the undersigned omitted to mark and receive. The DOR agreed that the Exhibit could be received. The packet has now been marked as Exhibit 'A' and is received.

¹¹ Test. of T. Carr and Ex A.

¹² Ex. 7 and Test. of T. Carr.

¹³ Test. of Fred Tacheny and Ex. A.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Administrative Law Judge is authorized to hear this matter and to make a recommendation to the DOR pursuant to Minn. Stat. §§ 16D.11, subd. 4 and 14.50.
2. The DOR has complied with all procedural requirements of law and rule.
3. Respondent received proper notice of the DOR action and of his right to appeal the action.
4. Respondent timely appealed.
5. Minnesota Statutes section 16D.11, subdivision 1, requires the DOR Commissioner to add collection costs to referred debts.
6. Minnesota Statutes section 16D.11, subdivision 2, states the amount of the costs shall be 17 percent. However, subdivision 7 requires the Commissioner to determine a rate each year, subject to a maximum of 25 percent.
7. For 2012 and 2013, the rate was 20 percent.
8. The DOR properly imposed collection costs in the sum of \$62,919.35.
9. Respondent has not shown that he is entitled to cancellation and subtraction of the costs imposed.
10. Respondent has failed to show "reasonable cause" for failure to pay the debt prior to referral. Inability to pay, under the facts of this case, is not reasonable cause.
11. The attached memorandum is incorporated by this reference.

Based upon the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

RECOMMENDATION

It is respectfully recommended that the imposition of collection costs be SUSTAINED.

Dated: December 24, 2013

s/Thomas W. Wexler
THOMAS W. WEXLER
Administrative Law Judge

Reported; Digitally recorded.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of the Minnesota Department of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact Myron Frans, Commissioner, Minnesota Department of Revenue, 600 North Robert St., St. Paul, MN 55146 to learn about the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail or as otherwise provided by law.

MEMORANDUM

Respondent is 69 years old and unemployed. It appears unlikely that he will be able to pay more than a small part of the debt even if no collection costs are imposed. The DOR agrees that his Social Security income is exempt from levy by creditors. Respondent has entered into an installment-type payment agreement, which will provide only \$4,425.00 over 59 months.

Respondent's household income slightly exceeds twice the applicable Federal Poverty Guideline.

Minnesota Statutes section 290A.03, subdivision 3(1)(a), initially appears to include in "income" only that part of Social Security that is taxable. That section refers to federal adjusted gross income. Approximately 20 percent of Social Security income is generally excluded from "adjusted gross income." If that were the test of what is to be included in "income," then Respondent's income would fall below twice the federal poverty guidelines. However, subdivision 3(v) is more specific and would appear to include all Social Security income. Therefore, all of Respondent's income for the 12 month look back period must be included to determine if his household income is more or less than twice the federal poverty guidelines.

Minnesota Statutes section 16D.11, subdivision 3(1), excludes the exemption subtractions in Minn. Stat. § 290A.03, subd. 3(3) from the calculation of income for the purpose of determining collection cost imposition.

What constitutes "reasonable cause" is not defined in the statutes. The DOR cites to Minnesota Revenue Ruling 97-01 to analogize to Minn. Stat. § 16D.11, subd. 3(2).¹⁴ Inability to pay is not cited as a basis to find reasonable cause. If the test of reasonable cause was related to a fault concept, such as ability to pay child support, then it would clearly appear that Respondent has no ability to pay. The Minnesota Supreme Court has equated "reasonable cause" with culpability in a tax court context.¹⁵ The meaning of reasonable cause is ambiguous.

The DOR offers Revenue Notice #97-01 which addresses reasonable cause in a tax context.¹⁶ Under that Notice, when the serious illness is directly related to a late payment, that could be reasonable cause. Respondent has not shown that his illness is related to his non-payment.

The Revenue Notice also provides:

A 'reasonable cause' under this part B, is one resulting from circumstances beyond the taxpayer's control. This includes circumstances that cannot reasonably be expected to be under the taxpayer's control, or that make unreasonable the normal expectation of timely performance.

In the present case, Respondent's claim is colored by the criminal circumstances that created the debt. Respondent claims herein that he was not guilty and should not have pled guilty or been convicted. That claim is beyond the jurisdiction of this proceeding. There has been no showing of what happened with the funds wrongfully

¹⁴ Ex. 9.

¹⁵ See *Fridlund Securities Company v. Minnesota Commissioner of Revenue*, 430 N.W.2d 154, 165 (Minn. 1988).

¹⁶ Ex. 9.

taken or that the underlying debt was created by circumstances beyond respondent's control.

The imposition of collection costs here most likely has no reasonable relationship to the amount of costs that will be incurred in this case. However, the legislature has not tied the amount of costs to a measure of reasonableness as it relates to a particular debt.

The imposition of collection costs should be sustained.

T. W. W.